IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 341

FLOYD A. WALLIS,

Petitioner,

versus

PAN AMERICAN PETROLEUM CORPORATION,

Respondent.

FLOYD A. WALLIS,

Petitioner,

versus

PATRICK A. McKENNA,

Respondent.

(Pan American Petroleum Corporation,
Initially A Co-Defendant With Wallis)

PETITIONER'S SUPPLEMENTAL AND REPLY BRIEF.

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I.

ADDITIONAL CONFLICTING DECISIONS.

May It Please the Court:

As noted in the petition for certiorari (p. 16), the majority below conceded that its decision **was contrary** to

the decision of the Tenth Circuit in the case of *Blackner v. McDermott*, 176 F. (2d) 498 (1949). Additionally, we noted at page 18 of the petition, other decisions of various Circuit Courts of Appeal, **including one by the Fifth Circuit,** all of which are in conflict with the majority opinion below.

We now wish to call to this Court's attention, still another decision by a Circuit Court of Appeals which is directly in conflict with, and contradictory to, the decision below. We refer to the recent decision, rendered while these cases were pending on rehearing below, of *Bolack v. Underwood*, 340 F. (2d) 816 (C.C.A., 10th, 1965). In *Bolack*, as in the cases at bar, the suit involved a dispute between private individuals over the ownership of an oil and gas lease covering Federal lands. Both parties held assignments of the Federal lease executed by the lessee, however, the first assignee (Bolack) **had not recorded his assignment as required by the laws of New Mexico, although it had been filed in the records of the Federal Land Office.** In holding in favor of the junior, or second, assignee of the lease (Underwood), the Court **applied local law,** saying at page 819:

> "The answer to the question of whether Underwood may be considered an innocent purchaser for value is dependent upon whether the records at the Federal Land Office constitute constructive notice to a purchaser of a federal lease. New Mexico law is to the effect that the federal land office records do not constitute such notice, as sections 65-2-1 et seq., N.M.S.A., require that assignments of interests and royalties in federal oil and gas leases be recorded in the appropriate county clerk's office, and

sections 71-2-1 et seq. provide that an instrument that is not recorded cannot affect the title or right to real estate of any purchaser in good faith. New Mexico law also provides that an interest in an oil and gas lease constitutes an interest in real property, e.g., Rock Island Oil & Refining Co. v. Simmons, 73 N. M. 142, 386 P. 2d 239. **There is no federal statute governing disputes between private individuals regarding rights to federal oil and gas leases, and in such instances, where no right of the federal government is involved, state law governs.** See Bank of America Nat. Trust & Sav. Ass'n v. Parnell, 352 U. S. 29, 77 S. Ct. 119, 1 L. Ed. 2d 93; United States v. Union Livestock Sales Co., 4 Cir., 298 F. 2d 755, 96 A.L.R. 2d 199.

"Viewed in this posture, the problem at hand is reduced to the simple issue of **whether under New Mexico law** Underwood is chargeable with notice of the prior assignment to the Bolacks . . ."[1]

Here then is a decision which squarely contradicts the decision below, for it holds that (1) "There is no **federal** statute governing disputes between private individuals regarding right to federal oil and gas leases,"—yet the majority below holds that the Leasing Act itself requires the Courts to fashion a law applicable to such disputes, and (2) **but more important**, the decision holds that in such a private dispute, "no **right** of the federal government is involved," —and while the majority below could never point out wherein any right, or, interest of the federal government was involved in these private disputes, yet it held that "uniformity" in the law applicable to such disputes is re-

[1] All emphasis supplied herein, unless otherwise noted.

quired. **We submit the two decisions cannot be reconciled,** and the petition should be granted.[2]

II.

THE BRIEFS IN OPPOSITION.

No extended reply is required as respects the briefs filed by respondents in opposition to Wallis' application. By way of generalization, we point out that neither brief denies, or even purports to deny by inference, the fact that the majority opinion below is in direct conflict with some six decisions of the various Circuit Courts of Appeal. Nor does either of the briefs demonstrate a lack of conflict between the decision below and this Court's decision in *Ducie v. Ford*, 138 U. S. 587 (1871).[3]

The same is true as respects this Court's decision in *Hodgson v. Federal Oil and Development Co.*, 274 U. S. 15 (1927), discussed at p. 49 of the petition. While both briefs attempt to cope with *Hodgson*, yet both treatments entirely ignore the fact that that decision was rendered prior to the development by this Court of the "doctrine of abstention."

A. "Respondents' Statement Of Case."

The majority opinions below reached no conclusion concerning the disputed factual issues, but simply re-

[2] It should be noted that the decision in *Bolack* was rendered quite some time after this Court's decision in *Boesche v. Udall*, 373 U. S. 472 (1962). Yet the Court in *Bolack* did not feel called upon to even cite *Boesche*, much less consider whether or not it might bear upon the point in question.

[3] Pan Am's brief does not even mention *Ducie*, and McKenna's brief (p. 8) is unable to deny the square conflict, but merely makes the unsupported statement that: "the question of whether federal law should instead apply was not raised."

manded the case for re-trial on all such disputed factual issues. Accordingly, in preparing the petition for certiorari, and more particularly the "Statement Of Case," Wallis attempted to comply with the requirements of the Rules of this Court, and confine such statement to a recitation of such facts as would properly present the questions presented for review. In doing so, Wallis attempted to confine the factual recitation to those factual matters decided and ruled upon by the Trial Court, avoiding factual issues not passed upon by the Trial Court, or, confining it to facts about which there was no dispute.

While neither of the briefs in opposition makes any specific objection to Wallis' "Statement Of Case," yet both briefs purport to give a "Statement Of Case." This Court's Rule 40, par. 3, calls for a "Statement Of Case" by a respondent where "necessary in correcting any inaccuracy or omission in the statement of the other side . . ." Neither of respondent's "statement" suggests any inaccuracy in Wallis' "Statement," and nothing contained in either such "statement" supplies any "omission" relevant to the questions presented for review. It is therefore obvious, that both respondents utilized the device of presenting a "statement," solely for the purpose of "smearing" Wallis. It is an old adage that when a litigant has neither the law nor the facts in his (its) favor, the best approach is to abuse his (its) adversary. This is the technique which has obviously been employed by Respondents herein. However, this is not the proper place to attempt a refutation of these unsubstantiated accusations leveled at Wallis, for they are not relevant to the proceeding before this Court, nor are they supported by any finding of fact by either of the Courts below. However, Wallis does feel constrained to make one comment as respects each such "statement."

At page 4 of McKenna's brief, an **extract** from a letter of May 4, 1956 is quoted by McKenna, followed by the statement that Wallis "refused to honor his agreement." This was done in such fashion as to make it appear that the quoted letter-extract reflected the agreement between the parties, which Wallis would not "honor." The Trial Court **found as a fact**[4] that the agreement between Wallis and McKenna was reflected by a letter agreement[5] dated December 27, 1954, **not May 4, 1956.**[6]

Pan Am, in its statement (p. 6) purporting to give the "decision" of the Trial Court, only quotes three partial extracts therefrom, one of which was clearly designed to convey the impression that the Trial Court made a "finding" that Wallis had **in fact** committed a "breach of trust." However, when the statement is quoted in its full context, it is apparent that the Court was merely quoting an abstract proposition of local law, and that it made no such finding of fact. The complete statement is as follows:

> ". . . Any new understandings reached in 1956, 1957, 1958 or 1959 are unenforceable in the absence of a writing. Nor does it matter whether Wallis obtained his lease by breaching his trust, **as alleged.** If the claimants acquired an interest in the lease, it is under the written instruments, **not by virtue of any subsequent estoppel.** (Court's foot-

[4] The Trial Court said: "McKenna's claim is imprisoned in the letter agreement of December 27, 1954—January 3, 1955; . . ." Cf. Opinion of the Trial Court, page 106 of the original petition herein.

[5] This letter agreement appears at page 159 of the original petition herein.

[6] As respects this letter of May 4, 1956, McKenna in quoting therefrom, conveniently omitted the reference thereto in the record of this proceeding. A reference thereto will show that the letter was *captioned* with a reference to the five *"acquired lands" lease applications* which were the subject matter of the December 27, 1954 letter agreement between the parties.

note) See Scurto v. Le Blanc, 191 La. 136, 184 So. 567; Pan American Production Co. v. Robichaux, 200 La. 666, 8 So. 2d 635; Wier v. Glassell, supra; Blevins v. Manufacturers Record Publishing Co., 235 La. 708, 105 So. (2d) 392, 414 (on rehearing), and cases there cited. **Of course, if Wallis did in fact breach his agreements,** he may be answerable in damages or compelled to make restitution. LSA-C.C. Arts. 1926, 1928, 1930-1934. But neither dissolution of the contract, nor damages, are prayed for here. This is a suit for specific performance only."

B. Importance Of Question Presented.

Both of respondents attempt to belittle petitioner's assertion of the importance of the question presented in this proceeding. They protest that it is pure speculation. However, neither of respondents cites a single prior decision since the passage of the Leasing Act in 1920, which supports the decision of the majority below. On the other hand, petitioner cites some seven decisions rendered since the passage of the Act, all contrary to the decision below. It is obvious that these contrary decisions, having stood without question for some forty-odd years,—have served as the basis for, and guide to, transactions involving trafficing in Federal oil and gas leases. As we pointed out in the petition, these Court decisions are in keeping with the similar practice of the officials of the Land Office. Until such time as the conflict now created by the decision below is resolved by this Court, these conflicting decisions necessarily present a question, not only as to transactions had in the past, but they also present a quandary as to precisely what law is applicable in the future—whether the transac-

tion (as noted by Judge Wisdom) results from contract, Court proceeding, inheritance, restitution or any other source.

C. Section 32 Of The Leasing Act.

Neither respondent could adequately explain the proviso of Sec. 32 of the Leasing Act, that nothing in the Act "shall be construed or held to affect the rights of the States . . . to exercise any rights which they may have . . . " In fact the two respondents could not even agree between themselves, as to a suggested explanation. McKenna distorts Wallis' contention by saying (p. 6) that Wallis contends, in light of Sec. 32, "that the 'rights of the States' includes the 'exercise' of a right by a State to determine what law is to govern in a suit filed in federal court." Having advanced this "straw-man," McKenna would then dispose of this matter, by characterizing it as an "absurdity." But Sec. 32 of the Act is not the State speaking or trying to tell a federal Court what law to apply. Sec. 32 is Congress speaking and Congress can tell a federal Court what law to apply. The majority opinion, upon which respondents rely, conceded the right and cause of action asserted by both respondents was "State-created," but in holding that federal law is applicable to these private transactions, the same opinion purports to follow the direction of Congress, by relying on some vague and ill-defined "public policy," which it **concludes** is related to these private transactions. If Sec. 32 does not preclude this conclusion, then precisely what does Sec. 32 cover or include?

Neither respondent offers or suggests an answer to this question. Thus Pan Am says (p. 9) that Sec. 32 "did not CREATE any rights in favor of the states," and Pan Am further says Sec. 32 "did not RECOGNIZE any rights of the states."[7] But Pan Am does not address itself to the central question, to-wit: Did Sec. 32 PRESERVE the rights of the States? Since the majority below concedes the right and cause of action asserted are State-created, is it not a "right" of the State to have its "public policy," as reflected by local law, govern the disposition of such cause and right of action? This question is likewise avoided by respondents.

D. The Rights, Interests, Duties Or Substantive Policies Of The United States.

As above noted, the majority opinion below made no effort to demonstrate wherein the outcome of these private disputes, would in any way affect the rights or interests of the United States. The *Bolack* case, *supra*, is a square holding that the United States has no such interests or rights. Recognizing this deficiency in the majority opinion, Pan Am attempts (p. 17) to supply this deficiency, with the following conclusion:

> "Therefore, the extent and legal consequences of the paramount right of the United States **to know the real lessee** is a substantive national 'interest.' "

This ludicrous conclusion, which the majority below would not even sponsor, is completely refuted by the provisions of

[7] The emphasis in both quotes, is that of Pan Am.

the Leasing Act, and more particularly Sec. 30 and Sec. 30(a) thereof, for when the lease is initally granted, the Secretary unquestionably "knows" precisely who is the lessee. And Sec. 30(a) provides that **"subject to the final approval** by the Secretary" an assignment or sublease "shall take effect as of the first day of the lease month FOLLOWING the date of FILING IN THE PROPER LAND OFFICE of three original executed counterparts thereof, together **with** any required bond and proof of qualification under this Act of the assignee or sublessee to take or hold such lease . . ." Thus, by this provision, Congress has made full and adequate provision to "know" the "real lessee" at all times, and a more "air-tight" provision could not be made. But if we concede the contrary (for sake of argument), Sec. 32 of the Act delegates to the Secretary—not to the Courts, the rule-making power to implement the statute and make adequate provision therefor.

In support of this phase of its brief, Pan Am cites, and places great reliance upon, this Court's decision in *Sola Electric Company v. Jefferson Electric Company*, 317 U. S. 173 (1942), which Pan Am states is "uniquely applicable herein." Pan Am's quotation from *Sola* (footnote 12, p. 15) commences with this statement: "In **such a case** our decision is not controlled by *Erie R. Co. v. Tompkins* . . . " What is the "such a case," which Pan Am so conveniently omits and fails to give? It is this:

> "It is familiar doctrine that the **prohibition** of a **federal statute** may not be **set at naught,** or **its benefits denied,** by state statute or state common law

rules. **In such a case** our doctrine is not controlled by *Erie R. Co. v. Tompkins* . . ."

Neither respondent, nor the majority below, attempts to point out any "prohibition of a federal statute . . . set at naught, or its benefits denied," by the decision of the Trial Court, and failing to do so simply demonstrates why *Sola* IS NOT "uniquely applicable here," as contended for by respondent.

On the other hand, the above quoted extract from *Sola* completely demonstrates why Sec. 32 of the Leasing Act is applicable to the cases at bar. Thus the above quoted extract from *Sola* demonstrates (as did the decision by the Court of Appeals in *Sola)* that the cause and right of action asserted were created by local law based upon contract, and under local law the defense of estoppel was a good defense. This Court reversed because of "the prohibition of a federal statute," and in the cases here involved the majority reverses because of the Mineral Leasing Act—some ill-defined "policy" of the Act. Yet the Leasing Act (Sec. 32) provides that "nothing in this Act shall be construed or held to affect the rights of the States . . . to exercise any rights which they may have . . ." We submit that a "right" of a State is to have its "public policy" as evidenced by its laws, applicable to, and dispositive of, a State-created cause and right of action. *Sola* acknowledges that such would be the case, but for the "prohibition" of a federal statute, yet Sec. 32 of the Leasing Act says the Act shall not be held or so construed to operate as such a "prohibition."

III.

CONCLUSION.

Petitioner shows that the petition for certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, MURRAY F. CLEVELAND, hereby certify that a copy of the foregoing Supplemental And Reply Brief, was served upon Counsel of Record in the Court below, representing Respondent Patrick A. McKenna, and, representing Respondent Pan American Petroleum Corporation, by enclosing each such copy in an envelope, duly addressed to each such Counsel of Record at his post office address, with the required air mail first class postage prepaid and affixed thereto, and depositing same in the United States Post Office at New Orleans, Louisiana, on this ..... day of September, 1965.

.....

MURRAY F. CLEVELAND, Counsel of Record for Petitioner.